

PT 96-36
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

CHRIST THE KING)	
LUTHERAN CHURCH)	
)	
Applicant)	
)	Docket # 94-16-877
v.)	
)	Parcel Index #s17-35-102-001
)	17-35-102-002
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Janet M. Johnson appeared on behalf of Christ The King Lutheran Church.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois on March 27, 1996, to determine whether the parcels here in issue and the improvements thereon qualified for exemption from real estate tax for part or all of the 1994 assessment year.

Rev. John W. Brazeal, pastor of the Christ the King Lutheran Church (hereinafter referred to as the "Applicant") and Mr. Arlen Edmundson, business manager for the Northern Illinois District of the Lutheran Church, Missouri Synod (hereinafter referred to as the "District"), were present and testified on behalf of the applicant.

The issues in this matter are first, whether the applicant is a religious organization. The second issue is whether the parcels here in issue were owned by the applicant for real estate tax purposes, during part or all of the 1994 assessment year. The final issue is whether these parcels and the improvements

thereon were used by the applicant for religious or exempt purposes during part or all of the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is also determined that the applicant owned parcel No. 17-35-102-001 and the improvements thereon for real estate tax purposes during the entire 1994 assessment year. It is further determined that the applicant owned parcel No. 17-35-102-002 and the improvements thereon during the period November 14, 1994 through December 31, 1994. Finally it is determined that the applicant used all of both parcels and the improvements thereon during all of the 1994 assessment year. However, parcel No.17-35-102-002, which was used in part as a parking lot, was not owned by the applicant until November 14, 1994.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that these parcels only qualified for exemption for 13 percent of the 1994 assessment year, was established by the admission in evidence of Department's Exhibits 1 through 5B.

2. On April 16, 1995, the Cook County Board of Appeals forwarded an Application for Property Tax Exemption To Board of Appeals, concerning these parcels for the 1994 assessment year. (Dept. Ex. No. 1)

3. On December 7, 1995, the Department notified the applicant that it was approving the exemption of these parcels for 13 percent of the 1994 assessment year. (Dept. Ex. No. 2)

4. The applicant's attorney then requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing held in this matter on March 27, 1996, was held pursuant to that request.

6. Pursuant to the applicant's Constitution, Revised July 1975, the applicant is organized for the following purposes:

The purpose of this congregation is; I. Nourishment of the believers through (a) preaching and teaching God's word as recorded in Holy Scripture; (b) regular worship services, (c) administration of the Holy Sacraments; (d) fellowship of the Communion of Saints. II: To spread the Word of God through; (a) local evangelism efforts; (b) support of missions outside of our local community. (Dept. Ex. No. 1L)

7. On January 1, 1967, the District, as seller, executed a contract for deed with the applicant, as buyer, concerning Cook County Parcel No. 17-35-102-001. (Dept. Ex. 3B)

8. The plat of survey indicates that the church and school building and the play ground as well as part of the paved parking/play area is on Cook County Parcel No. 17-35-102-001. (Appl. Ex. No. 1)

9. The applicant held worship services in the sanctuary on parcel No. 17-35-102-001 at 11:00 A.M. on every Sunday during 1994. The applicant also held a family worship service at 9:30 A.M. on the third Sunday of every month during 1994. (Tr. p. 20)

10. The average attendance at applicant's worship services during 1994 was approximately 80 people. (Tr. p. 21)

11. During 1994 the applicant operated a parochial grade school in the church and school building located on parcel No. 17-35-102-001, which included preschool through 8th grade. There were 76 students attending this grade school during 1994. (Tr. p. 20)

12. Cook County Parcel No. 17-35-102-002, which is 12 feet in width, is entirely improved with the remaining portion of the paved parking/play area. (Appl. Ex No. 1)

13. The District conveyed both of these parcels to the applicant on November 14, 1994 by a special warranty deed (Dept. Ex. No. 1H)

14. Rev. Brazeal testified that the paved parking/play area, a portion of which is located on parcel No. 17-35-102-002, is the only off street parking available to the applicant and is used on Sunday during worship services and also for evening church meetings. In addition this area is used during the week by the children in the parochial school as a play yard. Rev. Brazeal estimated

that the use of this area as a play yard would be approximately 65 percent of the time and as a parking lot 35 percent of the time. (Tr. pp. 22, 23 & 24)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...and not leased or otherwise used with a view to profit, is exempt,....

35 **ILCS** 200/15-125 provides in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any...religious...institution which meets the qualifications for exemption, are exempt.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

In the case of Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978), the Court held that the ministry, the contract purchaser pursuant to a contract for deed, was the owner of the real estate in question, for real estate tax exemption purposes. I therefore conclude that the

applicant was the owner of Cook County Parcel No. 17-35-102-001 during the entire 1994 assessment year.

While the witnesses for the applicant offered several different theories as to why the contract for deed did not include the legal description for Cook County Parcel No. 17-35-102-002, I conclude that the applicant failed to establish by competent evidence that it owned parcel No. 17-35-102-002 on or before the date of the special warranty deed, November 14, 1994.

Pursuant to the foregoing provisions of 35 **ILCS** 15-125, a parcel used as a playground would qualify for exemption without the necessity of ownership. However, pursuant to the provisions of 35 **ILCS** 15-125, a parcel used as a parking lot requires ownership as well as use to qualify for exemption. In the situation where the property as a whole, such as parcel No. 17-35-102-002, was used for both exempt and nonexempt purposes, the property will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is only incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971) and MacMurray College v. Wright, 38 Ill.2d 272 (1967). The 35 percent use of this parcel as a parking lot is most certainly, I conclude, more than merely incidental.

I therefore recommend that Cook County Parcel No. 17-35-102-001 and the improvements thereon be exempt from real estate tax for the entire 1994 assessment year.

I further recommend that Cook County Parcel No. 17-35-102-002 and the improvements thereon be exempt from real estate tax for 13 percent of the 1994 assessment year.

Finally, I recommend that Cook County Parcel No. 17-35-102-002 and the improvements thereon remain on the tax rolls for 87 percent of the 1994 assessment year, and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

October 2, 1996